

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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Terri Melby-Schaefer,

Plaintiff,

vs.

REPORT AND RECOMMENDATION

Michael J. Astrue,
Commissioner of the Social
Security Administration,

Defendant.

Civ. No. 07-2197 (PJS/RLE)

* * * * *

This matter came before the undersigned United States Magistrate Judge upon a routine supervision of cases filed in this Division, and upon an assignment made in accordance with Title 28 U.S.C. §636(b)(1)(B).

This matter was initiated on May 4, 2007, by the filing of a Complaint with the Clerk of Court. The Defendant was apparently never served with the Summons and Complaint, as required by Rule 4(m), Federal Rules of Civil Procedure, and consequently, on October 2, 2007, the Defendant filed a Motion to Dismiss for lack of Prosecution. See, Docket No. 2. On October 5, 2007, this Court issued an Order, deferred a ruling on the Defendant's Motion to Dismiss, and providing as follows:

That the Plaintiff is directed to show good cause, in writing, within twenty (20) days of the date of this Order, for an extension of time in which service can be effectuated. In the absence of good cause shown, the Court shall Recommend that this action be dismissed for failure to effect proper service upon the Defendant Michael J. Astrue, and for failure of prosecution.

Docket No. 6.

The Plaintiff has failed to abide by the terms of our Order of October 5, 2007. Since we have previously warned the Plaintiff of the potential consequences for her failure to timely serve the Defendant, and to abide by the Orders of this Court, we recommend that this action be dismissed, for failure to comply with this Court's Order of October 5, 2007, for failure to effect proper service on the Defendant Michael J. Astrue, and for lack of prosecution.

NOW, THEREFORE, It is --

RECOMMENDED:

1. That this action be dismissed for failure to comply with this Court's Order of October 5, 2007, for failure to effect proper service on the Defendant Michael J. Astrue, and for lack of prosecution.

2. That the Defendant's Motion to Dismiss for Lack of Prosecution [Docket No. 2] be granted.

BY THE COURT:

Dated: November 2, 2007

s/Raymond L. Erickson
Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.2(b), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than November 20, 2007**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than November 20, 2007**, unless all interested

parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.